

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RIGOBERTO CASTELLANO HERRERA,  
Defendant.

NO. CR16-287 JLR

~~PROPOSED~~ ORDER



THE COURT, having considered the Defendant's motion, labeled "motion and brief in support of Fed. R. Civ. P. Rule 60(b)(6)" (Dkt. #862), the response filed by the United States (Dkt. #863), the exhibits thereto, and all the files and records herein, finds as follows:


1. The facts and circumstances are as set forth in the United States' response to said motion.
2. Defendant's motion is construed as a petition for post-conviction relief pursuant to 28 U.S.C. § 2255.
3. Defendant's motion, filed more than one year after his conviction became final, is time-barred.
4. Defendant's motion, which seeks post-conviction relief unrelated to assistance

1 of counsel, is precluded by his waiver of such rights contained his plea  
2 agreement.

3 5. Defendant's Presentence Report did not apply a two-level weapon  
4 enhancement. Nor did the Court apply such an enhancement to Defendant's  
5 offense level and advisory guidelines computation at the time of sentencing.  
6 Accordingly, Defendant's requested relief lacks a factual basis.

7 IT IS THEREFORE ORDERED that Defendant's motion (Dkt. #862) is DENIED.  
8 IT IS FURTHER ORDERED that no certificate of appealability shall issue.

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10 DONE this 15<sup>th</sup> day of October, 2019.

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HON. JAMES L. ROBART  
United States District Court

Presented by:

18 s/ Steven T. Masada  
19 STEVEN MASADA  
20 Assistant United States Attorney  
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